(63)

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No. 2039 of 2003

PETITIONER: M/s Taaran Taran Tube wells, through its proprietor Mahendra Jain S/o Hukum Chand Jain, aged about 42 years, resident of Lokholi Naka Chowk, Rajnandgaon, Tehsil and District Rajnandgaon (Chhattisgarh)

-Versus-

RESPONDENTS:

1. The State of Chhattisgarh through its Secretary, Department of Nagar Palik Nigam, Mantralaya, D.K.S. Building Raipur, Tehsil and District-Raipur (CG).
2. The Commissioner, Nagar Palik Nigam, Rajnandgaon, Tehsil and District Rajnandgaon (CG).
3. The Mayor, Nagar Palik Nigam, Rajnandgaon, Tehsil and District, Rajnandgaon (CG).
4. The Collector, Rajnandgaon, Tehsil and District Rajnandgaon (CG).
5. M/s Bafna Construction Company, Near Kamal Talkies, Bharkapara, Rajnandgaon (CG).

POST FOR ORDER ON 19th SEPTEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

19th September, 2003

(64)

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Shri Shailendra Soni counsel for the petitioner.

Shri Ranbir Singh, Govt. Advocate for respondents No. 1 and 4.

Shri Ravindra Agarwal, counsel for the respondents No. 2 and 3.

Shri Anand Shukla, counsel for respondent No.5.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 19th September, 2003)

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1. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India challenging the decision of the Respondent No.2 by which the Respondent No.2 has bifurcated the contract of installing 52 tube wells borings into two parts and awarded 50% contract to the petitioner and 50% contract to the Respondent No.5.
2. The petitioner's petition is that the petitioner is a registered firm having its registration No.4654/Panji/Sasha/ Muaa/ Lo/ Swa/Yaa/Vi/99 and the petitioner firm is expert in drilling work.
3. The Respondent no.2 i.e. Nagar Palika Nigam, Rajnandgaon floated a tender on 26.5.2003 inviting tenders from the eligible tenderers/contractors who are registered and working in Public Health and Engineering Department for carrying out the tube well work in its area.
4. In response to the notice inviting tender the petitioner, respondent No.5 and one P. C. Jain submitted their tenders and quoted their rates for execution of tube well work. The tenders were opened in presence of all the three tenderers and a comparative chart Ex.P/5 was prepared on 3rd June 2003 after opening the tenders.
5. On 25th June, 2003 a special meeting of the general body of the Municipal Corporation was convened and in that meeting the decision was taken that the tube well work should be awarded 50% to the petitioner and 50% to the Respondent No.5. A copy of the decision taken in the meeting is Annexure P/6. The Respondent No.2 vide its memo dated 26.6.2003 Annexure P/7 communicated to the petitioner to execute an agreement within three days for boring of 26 tube wells in the jurisdiction of Municipal Corporation.
6. All the rates quoted by the petitioner were approved by the Respondent No.2 except item No. 3(a), and 4 and they altered the rates quoted by the petitioner. The petitioner had not quoted any rates for item No. 5 and 6 but the respondents-authorities awarded the rate of Rs. 125/- for item No.5 and Rs.400/- for item No.6. The Respondent No.2 awarded 50%

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contract to the Respondent No.5 on the rates quoted by the petitioner.

7. The petitioner submitted a detailed reply to the notice Annexure P/7 which is Annexure P/8. The petitioner quoted Rs. 25759.00 for 125 m.m. whereas the Respondent No.5 quoted Rs. 26789.00 thereby the difference between two is Rs. 1030 in each complete bore. Similarly for 150 m.m. the petitioner quoted rate of Rs. 25885.00 and Respondent No.5 quoted Rs. 26909.00 thereby the difference between the two is Rs. 1024/- in per complete bore but the Respondent No.2 awarded the contract for boring 26 tube wells to the petitioner and 26 tube wells to the Respondent No.5.

8. According to the petitioner as per the N.I.T. all the bores should have been done by D. T. Ring Machine and it is submitted that except the petitioner no other contractor possess D. T. Ring Machine for bores. It has further been mentioned by the petitioner that the Respondent No.2 for benefiting the Respondent No.5 overlooking the terms and conditions on his own free will and in an illegal and arbitrary manner favoured the Respondent No.5 knowing fully well that the rates quoted by the Respondent No.5 were not the lowest rates than the rates quoted by the petitioner. The purpose of inviting tender was that to get more work on reasonable rates. But in this case the Respondent No.2 has floated the N.I.T. for 52 tube wells but awarded 50% work to the Respondent No.5 whose rates were higher than the rates quoted by the petitioner. Therefore, a writ in the nature of certiorari quashing the impugned decision dt. 25.6.2003 be issued.

9. Return has been filed on behalf of the Respondents No. 2 and 3 in which they have mentioned that the tenders were invited on 3.6.2003 and comparative statement was prepared. After preparation of comparative statement the tender was kept before the tender committee which had not approved the tender rates and fixed the standard lowest rates which was also approved and passed by the special meeting of General Body of Municipal Corporation. It is denied that the

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development charge and registrivity survey i.e. two works mentioned at Sr.No. No. 5 and 6 should have done by the contractor at their own cost. All the tender rates quoted by the tenderers were disapproved by the tender committee, and new lowest rates were approved by the General Body of the Municipal Corporation, Rajnandgaon thereafter notices were also issued to the petitioner and Respondent No.5 for their consent. The rates approved by the committee is 25559.00 for 125 m.m. and Rs. 25685.00 for 150 m.m. which is less than the rates quoted by the petitioner and also by the competitors taking part in the tender. In Clause 5 it is mentioned that the Officer competent shall have a right to reject all or any of the tender and the rates approved by the committee is less than the rates quoted by the petitioner and the other competitors. There is no financial loss to the Municipal Corporation as mentioned by the petitioner, therefore the petition be dismissed.

10. The reply has also been filed by the Respondent No.5 in which it has been mentioned that the Municipal Corporation tender committee took the decision on which the tender item was awarded to him and after entering into an agreement he invested huge amount for doing the allotted work but no work order is issued till now and if the Respondent No.5 is not allowed he will suffer the loss of huge amount.

11. I have heard learned counsel for the parties.

12. It is admitted position that the tender was invited by the Respondent no.2 for boring of 52 tube wells and in response to that the petitioner, Respondent No.5 and one P. C. Jain submitted their tender and a comparative chart Annexure P/5 was prepared. If we peruse the comparative chart the grand total of the rates quoted by the petitioner, for installation of one tube well, was lowest, rates quoted by the respondent No.5 were next lowest and the rates of Shri P. C. Jain were highest. The petitioner's rates for 125 m.m. was Rs. 25759 and for 150 m.m. 25885 and the rates of Respondent No.5 for 150 m.m. 26909 and for 125 m.m. 26789.00. Therefore, the

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petitioner was the lowest tenderer. As per the settled principle the Respondent No.2 or the tender committee in the first instance ought to have called the petitioner and should have asked him for the reasonable rates which are fixed by the tender committee and if they were acceptable to the petitioner then the contract should have been awarded to him. If the petitioner was not agreeable to those rates in that case the tender committee was within its right to award the contract to the Respondent No.5 being the next lowest tenderer. But in this case the committee concerned as well as the Respondent No.2 devised their own method and acted in a most arbitrary and unreasonable manner without first asking the petitioner they themselves split the contract into two parts and decided to award 50% contract to the petitioner and 50% contract to the Respondent No.5.

13. The rates of the petitioner were lowest and only the rates of two items were reduced by the tender committee. The committee ought to have had asked to the petitioner as to whether it is acceptable to him and if it was not acceptable to the petitioner than they ought to have had awarded the contract to the Respondent No.5. In this case even the petitioner accepted the rates fixed by the Respondent No.2, therefore there was no question of splitting the contract and there was no provision in the notice inviting tender that the Respondent No.2 will be well within its right to split the contract. More over it has nowhere been said that the petitioner firm was not capable to execute the whole contract. More particularly the petitioner has mentioned in para 5.12 of the petition that the petitioner firm is the only firm which possess the D. T. Ring Machine for boring the tube wells and no other firm is possessing that machine. It shows the competence of the petitioner. More over the objection of the petitioner is correct with regard to splitting the contract. A perusal of the Annexure P/1 N.I.T. shows that the condition No. 1 and 2 reveals that the contractor was supposed to conduct the survey of registrivity and after installation he was

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also supposed to handover the tube well after complete testing. The condition No.3 also lays down that according to the need for the purpose of boring the tube well in the streets In well Ring Machine will be used and for that the petitioner has said that he is in possession of that machine and nothing has been said about it by the Resplendent No.5. There is no provision in the N.I.T. by which the Respondent No.2 or the Committee is authorized to split the contract and as has been mentioned by the petitioner that the committee has unnecessarily fixed the rates for Item No. 5 and 6 as Rs. 125/- and Rs. 400/- whereas this was to be done by the contractor himself without any cost and that is why the petitioner had not quoted the rates of these two items.

14. The respondents are trustee of the public money and they are duty bound to act and conduct themselves in a most reasonable, fair and transparent manner. Since they are dealing with the public money, they were not entitled to change the terms and conditions of the N.I.T. or split the contract at their own. They have acted in a most unreasonable and arbitrary manner by not offering their rates first to the petitioner being the lowest tenderer and it is not the case of the respondents that the tender of the petitioner was not within the conformity of the requirement of the N.I.T. or he was not capable to execute the order alone or his past track record was not up to the mark.

15. In view of the above by all means the decision of the respondent No.2 cannot be said to be just, fair and reasonable in splitting the contract, therefore, it is liable to be quashed qua awarding of the contract to the respondent No.5.

16. In the result the writ petition of the petitioner is allowed and the decision of the respondent No.2 in awarding the contract for boring of 26 tube wells to Respondent No.5 is quashed.

Sd/-
L.C. Bhadoo
Judge

Thakur

22/9 23/05/03